IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Crl.Rev.No.1704 of 2007
Date of Decision:- 25.09.2007

Aman & another ....Petitioner(s)

through
Mr.Gorav Kathuria, Advocate

vs.

State of Haryana ....Respondent(s)

through
Mr.Pawan Singh, AAG, Haryana.

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CORAM:-HON'BLE MR.JUSTICE SURYA KANT.

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1) Whether Reporters of the local papers may be allowed to see the judgment?
2) To be referred to the Reporters or not?
3) Whether the judgment should be reported in the Digest?

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SURYA KANT, J. (ORAL)

This revision petition is directed against the order dated 18.8.2007 passed by the learned Additional Sessions Judge, Faridabad whereby, apart from Section 323, 325 506 read with Section 34 IPC, the petitioners have been charge-sheeted for an offence under Section 307 IPC also.

Their main grievance is that *prima facie,* no offence under Section 307 IPC is made out.

The case in hand was registered on the statement of Ravi Bhati who alleged that on 25.4.2007 he was coming from Goodyear Factory after attending his duty and when he reached near Aggarwal School, the petitioners along with one more person came on a motorcycle and one of

them pushed him from behind as a result of which he fell down from his motorcycle and thereafter they attacked him with iron rods and gave blows on his legs/feet. It was alleged that both the petitioners gave 7-8 blows on his feet. It was further alleged that the petitioners allegedly forbid the public persons from intervening, however, he could be saved as his brother Rajesh and cousin Rakesh reached at the spot.

At the time of framing of charges it was contended by the petitioners that since there is no medical opinion regarding the injuries on the person of the complainant being dangerous to life, no case under Section 307 IPC is made out and at the best charges could be framed under Section 325 IPC only.

The learned Additional Sessions Judge, however, has repelled the aforesaid contention after observing that the manner in which the occurrence had taken place and/or multiple injuries are stated to have been caused on both the legs of the complainant with iron rods, a *prima facie,* case under Section 307 IPC was made out, more so when at the time of framing of charges the Court is to consider the report under Section 173 Cr.P.C., Medico Legal Report as well as statements of the witnesses under Section 161 Cr.P.C. and/or other documents on record.

Aggrieved, the petitioners have filed this revision petition.

Section 307 IPC provides that whoever does any act with such intention or knowledge and under such circumstances that, if he by that act caused death, he would be guilty of murder, shall be taken to have attempted to commit murder.

It is well known that to prove an offence under Section 307 IPC it is not essential that bodily injury capable of causing death should

have been inflicted. As held by the Apex Court in the case of **Sagayam vs. State of Karnataka,** 2000 (4) SCC 454, *"an attempt in order to be criminal need not be the penultimate act foreboding death. It is sufficient in law if there is present an intent coupled with some overt act in execution thereof, such act being proximate to the crime intended and if the attempt has gone*

so far that it would have been complete but for the extraneous intervention which frustrated its consummation."

In the present case, the Medico Legal Report of the injured complainant (Annexure P-5) indicates- (i) a triangular shaped bone deep 5 x 5 x 6 cm. cut on the left leg from where the blood was oozing out;(ii) both the legs appear to have been fractured; and (iii) Each one of the injury *prima facie* suggests that the same could not have been caused with single blow of an iron rod.

As per the allegations, the petitioners attacked the injured-complainant with a pre-meditated mind and with deadly weapons like iron rods.

In these circumstances, it will be too pre-mature to presume that the petitioners had no intention to cause death of the injured or they had no knowledge of the fact that had the iron rods struck against a vital part of the person of the injured the same could have caused his death. The ultimate injuries suffered by the complainant are inconsequential for the determination of the charge.

Consequently and for the reasons aforestated, I do not find any merit in this revision petition which is accordingly dismissed.

This, however, shall not preclude the petitioners from raising

their plea at an appropriate stage that the evidence led by the prosecution does not disclose commission of an offence under Section 307 IPC by them.

September 25, 2007 **(SURYA KANT)**
poonam **JUDGE**